



VIDYUT OMBUDSMAN FOR THE STATE OF TELANGANA

First Floor 33/11 kV substation, Hyderabad Boats Club Lane
Lumbini Park, Hyderabad - 500 063

:: Present:: **R. DAMODAR**

Thursday, the Twenty Sixth Day of May 2016

Appeal No. 03 of 2016

Preferred against Order Dt. 17-12-2015 of CGRF In

CG.No:483/2015 of Adilabad Circle

Between

M/s Astalaxmi Spinning Mill Pvt.Ltd represented by Sri.V.S.Jayarajan,
Survey No.38, Light Industrial Area, Adilabad Dist. - 504 001.
Phone:- 08732 - 233383, 230071.

... Appellant

AND

1.The SAO/Circle office/Adilabad-9440811726.

2.The SE/OP/ADilabad-9440811670.

...

Respondents

The above appeal filed on 21.01.2016, coming up for hearing before the Vidyut Ombudsman, Telangana State on 11.05.2016 at Hyderabad in the presence of Sri.V.S Jayarajran - for Appellant and Sri. B. Srinivas-SAO(I/C)/Adilabad, for the Respondents and having considered the record and submissions of both the parties, the Vidyut Ombudsman passed the following;

AWARD

The Appellant, a consumer of HT with SC No. ADB 167 claimed that the DISCOM has imposed abnormal penalties during R&C measures from 02/2013 to 08/2013 on open access and non open access services. The ERC waived 50% of penal charges on one time basis for all consumers against whom R&C measures were applied. The Appellant alleged that the waiver of 50% penal charges though applied to all consumers, has not been applied in its case and sought waiver

through a complaint lodged with the CGRF.

2. The 1st Respondent/SAO submitted a report before the CGRF stating that the waiver of 50% of the penalties charged during R&C measures has not been applied in the case of the Appellant, because of the pendency of W.P.NO. 115 of 2014.

3. After considering the material on record, the CGRF by relying on Clause of 2.37 of Regulation 3 of 2015 of TSERC which is to the effect that “Where proceedings in respect of the same matter or issue between the same complainant and the licensee are pending before any court, tribunal, arbitrator or any other authority, or a decree or award or a final order has already been passed by any such court,tribunal,, arbitrator or authority as the case may be” the grievance may be rejected at any stage, has dismissed the complaint, in view of pendency of WP.No. 115 of 2014 through the impugned orders.

4. Aggrieved and not satisfied with the impugned orders, the Appellant preferred the present Appeal seeking waiver of 50% of penalties to its Service Connection No. ADB 167, charged during R&C period towards PDL (Permitted Demand Limit) and PCL (Permitted Consumption Limit).

5. The Appellant claimed that without calling for hearing, the impugned order has been passed which is not legal.

6. The 2nd Respondent/SE/OP/ADB through a letter dt.30.4.2016 stated in the Appeal that the Hon’ble High Court of AP in the interim orders in W.P.M.P.No. 127 of 2014 directed that “there shall be interim direction as prayed for on the condition of petitioner company depositing 50% of penal charges within 4 weeks from today. The amounts already paid by petitioner company shall be given credit to” as modified by the order dt.30-01-2014 in W.P.M.P.No. 3076/2014 “the interim order dt.3.1.14 is modified to the effect that there shall be an interim direction on the condition of the petitioner depositing 50% of the bill amounts to be paid within two(2) weeks from today.”

7. The 2nd Respondent stated that since W.P.No. 115 of 2014 filed by the Appellant is pending resolution by the Hon’ble High Court, the waiver of 50% of penal charges during R&C measures towards PDL & PCL was not considered.

8. After hearing arguments and on consideration of the material on record, the

following issues arise for determination:

- i. Whether the Appellant is entitled to waiver of 50% of penal charges towards PDL & PCL during R&C measures, pending W.P.No. 115 of 2014?
- ii. Whether the impugned orders are liable to be set aside?

ISSUES 1&2

9. The entitlement of the Appellant company for waiver of 50% penalties charged towards PDL & PCL during R&C measures is admitted by the Respondents. It is also clear from the proceedings No. APERC/Secy/154/2013 dt.8.8.2013, the penal charges levied during R&C measures to an extent of 50% was waived for all consumers by way of adjustment against the future bills.

10. The Appellant claimed that the Respondents admitted that the waiver of 50% penalties was not given to the Appellant because of the pending Writ Petition filed by the Appellant. The Appellant correctly contended that the pendency of the Writ Petition is not a bar to apply the waiver since the issue involved in the Writ Petition is different from the present issue of waiver of 50% of R&C penalties. A perusal of the prayer in the Writ Petition affidavit makes the point clear. The Appellant filed W.P.No. 115 of 2014 seeking the following relief:

“ for the reasons stated above it is therefore prayed that this Hon’ble court may be pleased to issue any writ, Order or Direction, more particularly in the nature of Writ of Mandamus declaring the action of the Respondents in determining the payment of electricity charges vide demand notices the latest dt.23.10.2013 and 10.12.2013 on the basis of demand and consumption calculated by taking block of 15 minutes as a unit for determining compliance of R&C measures and further threatening to disconnect the electricity to the petitioner's premises on failure to produce the proof of payment of the illegally demanded amount as illegal, arbitrary, unconstitutional and consequently to set aside the demand notices dt.23.10.2013 and 10.12.2013 and pass further order or other

orders in the interest of justice.”

“In the interim it is therefore prayed that this Hon’ble court may be pleased to stay all further action in pursuance of the revised demand notices dt.23.10.2013 and 10.12.2013 issued by the 1st Respondent including disconnection of electricity in the petitioner’s premises pending disposal of the Writ Petition.....”

11. The Appellant also raised its grievance in the Writ Petition against the Respondents for non treating the service as a continuous process industry in levying R&C penalties from the month of September to November,2012.

12. The Respondents claimed that when a writ Petition is pending regarding R&C measures, the question of waiver is not considered because of Clause 2.37 of Regulation 3 of 2015.

13. The Clause 2.37 specifically prohibits CGRF from entertaining any matter or an issue when it is pending between the parties before any court, tribunal authority etc. The Appellant is not questioning the action of the Respondents in not treating it as a continuous process industry in this forum. Similarly the Appellant is not questioning the demand notices dt.23.10.2013 and 10.12.2013 issued by the Respondents for exceeding permitted demand limit and permitted consumption limit for the period from 02/2013 to 07/2013 in this forum. When these aspects of the matter are not in issue in the complaint as well as appeal, the relief sought by the Appellant for waiver of 50% of penalties charged during R&C period towards PDL and PCL, which is not subject matter in the writ petition can be decided in this matter. Even if the writ petition is disposed of either way, the waiver of 50% of penalties charged during R&C measures towards PDL and PCL by the Respondents is not affected. The Respondents have to apply the proceedings No. APERC/Secy/154/2013 dt.8.8.2013 to all consumers subjected to R&C measures including the Appellant and waive of 50% of penalties imposed during R&C measures.

14. The rejection of complaint by the CGRF through the impugned orders on the ground that the W.P.No. 115/2014 is pending is not correct, because the matter in issue in the present matter is different than the one in the W.P.No. 115 of 2014 and therefore, the Respondents ought to have accepted the complaint

and ordered implementation of the proceedings of the ERC dt.8.8.2013 waiving 50% of the penalties imposed on the Appellant during the R&C measures.

15. In view of the aforementioned discussion, both the points are answered accordingly, setting aside the impugned orders.

16. In the result the Appeal is allowed directing:

a. waiver of 50% penalties imposed from 02/2013 to 08/2013 on the Appellant during R&C period towards PDL and PCL as per proceedings APERC/Secy/154/2013 dt.8.8.2013, by way of adjustment against the future bills.

b. and setting aside the impugned orders.

of
17. This award shall be implemented within 15 days of its receipt at the risk
of
penalties as indicated in Clauses 3.38,3.39 and 3.42 of the Regulation 3/2015
of
TSERC.

of
Typed by CCO, Corrected, Signed and Pronounced by me on this the 26th day
of
May, 2016.

Sd/-

VIDYUT OMBUDSMAN

1. M/s Astalaxmi Spinning Mill Pvt.Ltd represented by Sri.V.S.Jayarajan,
Survey No.38, Light Industrial Area, Adilabad Dist. - 504 001.
Phone:- 08732 - 233383, 230071.t.
2. The SAO/Circle office/Adilabad-9440811726.
3. The SE/OP/ADilabad-9440811670.

Copy to:

4. The Chairperson, CGRF, TSNPDCL, Vidyut Bhavan, Nakkalagutta, Hanamkonda, Warangal.
5. The Secretary, TSERC, 5th Floor, Singareni Bhavan, Red Hills, Hyderabad.